

State Laws Impacting Drug-Free Workplace and Drug-Testing Issues Kentucky, Virginia and West Virginia

State	Unemployment Compensation (UC)	Workers' Compensation (WC)	WC Discounts	Drug-Free Workplace Act	Mine-related	Medical Examinations
KY	Disqualification for misconduct, including reporting to work "under the influence" or consuming alcohol or drugs at work. <i>Note: How determined is not specified; drug testing not mentioned.*</i>	Denied if "intoxication" is the "proximate cause" of injury, death or disease. <i>Note: Doesn't specify whether intoxication can be from either illicit drugs or alcohol. How "causation" is determined is not specified; drug testing not mentioned.*</i>	None available	None	Entering a mine property "under the influence" or intoxicated by alcohol or drugs is prohibited.* Alcohol and drugs prohibited in/about mines – private vehicles exempted.	N/A
VA	Disqualification if discharged for confirmed positive drug test; performed according to employer policy and using certified lab.** Disqualification during any week of a positive pre-employment drug test. <i>Note: Not tied to "misconduct" or intoxication.</i>	Denied if injury caused by "intoxication" or use of illicit drugs. Positive drug test or .08 BAC creates a rebuttable presumption of intoxication. <i>Note: Positive drug test doesn't necessarily indicate causation and "rebuttable presumption" doesn't apply to causation.</i>	5% discount for drug-free workplace programs (DFWP). <i>Note: What constitutes a DFWP is not defined but rather left to WC insurance carrier (so can vary).</i>	Those with State contracts over \$10,000 must have a DFWP and include such provisions in subcontracts. <i>Note: Does not specify requirements for DFWP other than simple "prohibition" against "unlawful manufacture, sale, distribution, dispensation, possession or use." Drug testing not mentioned.</i>	No specific mining-related drug laws identified.	Employers cannot require employees to pay for required medical exams. <i>Note: Doesn't specify whether drug tests are considered a medical exam.***</i>
WV	Disqualified if discharged for misconduct related to being "under the influence" or "intoxicated" at work. <i>Note: Implies but doesn't specify that intoxication could be due to either alcohol or drugs (controlled substance); How intoxication is determined is not specified; drug tests not mentioned.*</i>	Denied if "intoxication" is cause of death/injury. Employer authorized to do blood tests if reasonable suspicion exists. <i>Note: Doesn't specify whether intoxication can be from either illicit drugs or alcohol. Blood test doesn't measure intoxication level.</i>	None available	None	Surface mine inspectors can be removed from office for drunkenness. <i>Note: Doesn't specify how that is determined; doesn't apply to illicit use of drugs.</i>	Employers can't require employees to pay for required medical exams. <i>Note: Doesn't specify whether drug tests are considered a medical exam.***</i>

*Drug tests show recent use; they do not show whether someone is currently "intoxicated" or "under the influence."

** Multiple acceptable certifying bodies (including, but not limited to HHS/SAMHSA, College of American Pathology, or American Association for Clinical Chemistry)

***The Americans with Disabilities Act (ADA) does not consider drug tests to be a medical exam, though other laws (e.g., HIPAA) do.